



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 27, 1996

Ms. Jennifer Soldano
Assistant General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701-2483

OR96-1027

Dear Ms. Soldano:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40320.

The Texas Department of Transportation (the "department") received a request for a complaint dated 3-12-96. You submitted to this office a document with two entries, one dated 3-12-96 and the other dated 3-13-96. You contend that this document is responsive to the request and is excepted from disclosure under section 552.103(a).

To show that section 552.103(a) is applicable, a governmental body must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex.App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You state that an employee has filed a sexual harassment complaint against the department with the Equal Employment Opportunity Commission ("EEOC"). This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 (1983) at 2, 336 (1982) at 1. You thus have shown that litigation is reasonably anticipated. Our review of the document at issue shows that it is related to the subject of the anticipated litigation.

However, it appears that the individual who is the opposing party in the anticipated litigation has seen at least the 3-12-96 entry. Information may not generally be withheld from disclosure under section 552.103(a) once the other parties to the litigation have

already had access to the information at issue. *See* Attorney General Opinion MW-575 (1982) at 2; Open Records Decisions Nos. 350 (1982) at 3; 349 at 2 (1982). Thus, the 3-12-96 entry on the document at issue may not be withheld from disclosure.

As to the 3-13-96 entry, if the opposing party in the anticipated litigation has not already had access to this information it may be withheld from disclosure under section 552.103(a). However, if the opposing party has already had access to this information as well, it may not be withheld from disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 40320

Enclosures: Submitted document

cc: Mr. Gary Johnson